



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

75 Hawthorne Street
San Francisco, CA 94105

MAY 03 2012

Mr. Roger Root
Assistant Field Supervisor
U.S. Fish and Wildlife Service
2493 Portola Road, Suite B
Ventura, California 93003

Subject: Supplemental Draft Environmental Impact Statement for the Tehachapi Uplands Multiple Species Habitat Conservation Plan, Kern County, California (CEQ# 20120021)

Dear Mr. Root:

The U.S. Environmental Protection Agency has reviewed the above-referenced document pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

The EPA reviewed the Draft Environmental Impact Statement and provided comments to the U.S. Fish and Wildlife Service (Service) on July 14, 2009. We rated the Tehachapi Uplands Multiple Species Habitat Conservation Plan Alternative and the document as Environmental Concerns – Insufficient Information (EC-2) due to two main concerns: the potential impacts to approximately 29 acres of wetlands, riparian, and wash habitats; and the effects of covered activities on the highly sensitive population of California condor. We provided recommendations for improving the air quality analysis and the assessment and disclosure of cumulative impacts, induced growth, transportation, and visual resources. We also asked for additional information describing the proposed alternatives and conservation lands, the purpose and need for the proposed project, and the irreversible and unavoidable impacts of the covered activities.

Based on our review of the Supplemental Draft Environmental Impact Statement (SDEIS), we are rating the preferred alternative and the document as EC-2, Environmental Concerns – Insufficient Information (see enclosed EPA Rating Definitions). We commend the Service for preparing detailed responses to our comments. The responses were extensive, thoughtful, and addressed most of the issues raised in our July 14, 2009 letter. We have continuing concerns, however, regarding the potential impacts of covered activities to wetlands and riparian areas, as well as the population of California condor that reside or forage within the proposed covered lands. We recommend that the Service demonstrate avoidance of waters of the U.S. before issuing the incidental take permit, and provide additional information in the final EIS comparing the effects of the alternatives on the California condor. Our detailed comments are enclosed.

We appreciate the opportunity to review this SDEIS. If you have any questions, please contact me at (415) 972-3521, or contact Jason Gerdes, the lead reviewer for this project. Jason can be reached at (415) 947-4221 or gerdes.jason@epa.gov.

Sincerely,



Kathleen Martyn Goforth, Manager
Environmental Review Office (CED-2)

Enclosure: Summary of the EPA Rating System
Detailed Comments

cc: John Robles, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service

SUMMARY OF EPA RATING DEFINITIONS*

This rating system was developed as a means to summarize the U.S. Environmental Protection Agency's (EPA) level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the Environmental Impact Statement (EIS).

ENVIRONMENTAL IMPACT OF THE ACTION

"LO" (Lack of Objections)

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

"EC" (Environmental Concerns)

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

"EO" (Environmental Objections)

The EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

"EU" (Environmentally Unsatisfactory)

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

ADEQUACY OF THE IMPACT STATEMENT

"Category 1" (Adequate)

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

"Category 2" (Insufficient Information)

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analysed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

"Category 3" (Inadequate)

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analysed in the draft EIS, which should be analysed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From EPA Manual 1640, Policy and Procedures for the Review of Federal Actions Impacting the Environment.

EPA DETAILED COMMENTS ON THE SUPPLEMENTAL DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE TEHACHAPI UPLANDS MULTIPLE SPECIES HABITAT CONSERVATION PLAN, KERN COUNTY, CA, MAY 3, 2012

Waters of the U.S.

In our comments on the DEIS, we stated that the DEIS lacked sufficient information to determine to what extent impacts to waters of the U.S. would be avoided, minimized, and mitigated as required by Section 404(b)(1) Guidelines of the Clean Water Act. We expressed concern that the development of the proposal to issue an incidental take permit (ITP) for 29 acres of potentially jurisdictional waters had not occurred in close coordination with the U.S. Army Corps of Engineers (Corps), the EPA, the Regional Water Quality Control Board (Regional Board), and the California Department of Fish and Game (CDFG). Additionally, we stated that the Tejon Ranch Corporation (TRC) had not demonstrated sufficient avoidance, minimization, and mitigation of impacts to waters.

The Supplemental Draft Environmental Impact Statement (SDEIS) includes information from the Tejon Mountain Village (TMV) environmental impact report (EIR) regarding wetlands delineated in the TMV project site, as well as the types of mitigation that would be imposed during the TMV approval process to minimize effects on wetlands. It is still unclear, however, how the full extent of HCP covered activities (not just the TMV development) would affect waters, and if TRC has demonstrated sufficient avoidance, minimization, and mitigation of impacts to such waters.

Recommendation:

The FEIS should discuss how the HCP covered activities could affect waters, and demonstrate that all impacts to waters would be avoided and minimized to the maximum practicable extent and that unavoidable impacts would be mitigated appropriately. We recommend that U.S. Fish and Wildlife Service coordinate with the Corps, EPA, Regional Board, and CDFG on this matter.

Critical Habitat for the California Condor

Our DEIS comment letter expressed concern about potential impacts to the population of California condor that utilize proposed covered lands. The EPA, along with several other commenters, recommended that the Service and the TRC consider an alternative that excludes development within designated California condor habitat. We commend the Service for acting on this recommendation and developing the Condor Critical Habitat Avoidance MSHCP Alternative--an alternative that would reconfigure proposed development to avoid federally designated critical habitat for California condor. This alternative, however, has not been sufficiently analyzed. The SDEIS includes extensive discussion about the preferred alternative--the Tehachapi Uplands Multiple Species Habitat Conservation Plan Alternative (TU MSHCP)--and its potential direct and indirect effects on the California condor and its foraging habitat; but does not include a commensurate level of analysis for the CCH Avoidance MSHCP and other alternatives.

Recommendation:

The FEIS should include a thorough analysis of the impacts of the Condor Critical Habitat Avoidance MSHCP Alternative. To facilitate comparison with the other alternatives, this analysis should include additional information on the impact that this alternative would have on waters, as well as on foraging habitat, the existing California condor population, and the potential for the population to expand its size and range. The FEIS should identify the environmentally preferable alternative, regardless of which alternative is selected.

